MOTION
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No. 80-1664

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CONSUMERS UNION
OF UNITED STATES, INC, et al.,

Appellants,

v.

VIRGINIA STATE BAR, et al.,

Appellees.

On Appeal from the United States District Court for the Eastern District of Virginia

MOTION TO DEFER CONSIDERATON OF JURISDICTIONAL STATEMENT

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PARTIES

Consumers Union Foundation, Inc. may be an affiliate of Consumers Union of United States, Inc. and Virginia Citizens Consumer Council Fund, Inc. may be an affiliate of Virginia Citizens Consumer Council under Rule 28.1.

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On January 8, 1981, the United States District Court for the Eastern District of Virginia ordered the Supreme Court of Virginia and its Chief Justice in his official capacity (herein referred to as "Virginia Court") to pay a reasonable sum as attorneys fees to Consumers Union of United States, Inc. and Virginia Citizens Consumer Council (herein referred to as "Consumers Groups"). However,

the District Court ruled that the Virginia State Bar (herein referred to as "Bar") was not liable to the Consumer Groups for attorneys fees because of special circumstances.

On January 28, 1981, the Virginia Court noticed its appeal of the above Order to both the United States Court of Appeals for the Fourth Circuit (herein referred to as the "Fourth Circuit") and to this Court.[1] On February 4, 1981, the Consumer Groups noticed their cross-appeal of the decision not to award fees against the Bar to the Fourth Circuit and to this Court. The Virginia Court and Consumer Groups have both informed the Fourth Circuit that they desire to pursue their appeals in that forum.

On March 30, 1981, the Virginia Court filed with this Court a Jurisdictional Statement and Motion to Defer Consideration of Jurisdictional Statement. The Motion requests this Court not to rule on its jurisdiction over the Virginia Court's appeal until after the appeal before the Fourth Circuit has been resolved.

On April 3, 1981, the Consumer Groups filed with this Court a Jurisdictional Statement for their cross-appeal. The Consumer Groups respectfully move that consideration of their Jurisdictional Statement be deferred pending action by the Court of Appeals if consideration of the Virginia Court's Jurisdictional Statement is deferred.

The Virginia Court's and Bar's liabilities for attorneys fees raise similar factual and legal questions and are closely interrelated. If this Court delays consideration of the Virginia Court's Jurisdictional Statement, it similarly should delay consideration of the Consumer Groups' Jurisdictional Statement so that the Fourth Circuit can review and rule on these issues concurrently.

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[1] *The Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, No. 80-1641 (U.S. Supreme Court 1981).

If a jurisdictional determination is deferred because the Virginia Court's appeal is protective, [2] consideration of this appeal, which also is a protective appeal, similarly should be delayed.[3] If this Court delays consideration of the Virginia Court's appeal because attorney fee liabilities are more appropriately decided first by the Fourth Circuit,[4] this Court also should defer consideration of this appeal so that the Bar's fee liabilities may be decided first by that Court.[5] Accordingly, appellants move this Court to defer consideraton of the Consumer Groups' Jurisdictional Statement if consideration of the Virginia Court's Jurisdictional Statement in the closely related appeal is delayed.

Respectfully submitted,

Consumers Union of United States, Inc.
Virginia Citizens Consumers Council
By

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[2]*See* Motion to Defer Consideration of Jurisdiction at 1-2 filed in *The Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, No. 80-1641 (U.S. Supreme Court 1981).

[3]Cf. *Norton v. Mathews*, 427 U.S. 524, 531 (1976); *Turner v. City of Memphis*, 369 U.S. 350 (1962); *Stainback v. Mo Hock Ke Lok Po*, 336 U.S. 368 (1962).

[4]*See* Motion to Defer Consideration of Jurisdictional Statement, *supra* n.2 at 2-3.

[5]*Gonzales v. Employees Credit Union*, 419 U.S. 90 (1974); *Allen v. Board of Elections*, 393 U.S. 544 (1969).